

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing service of pleadings and other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Young-Ah Everson

DEFENDANTS

Hartford Life and Accident Insurance Company; Group Life and Supplemental Life Plan for Employees of Swissport North America, Inc. & Swissport North America, Inc.

County of Residence of First Listed Defendant Connecticut

(IN U S PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE OF LAND INVOLVED

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff El Dorado

(EXCEPT IN U S PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan E. Kassan
Kantor & Kantor, LLP
19839 Nordhoff st.
Northridge, CA 91324
818-886-2525**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U S Government Plaintiff
☒ 3 Federal Question (U S Government Not a Party)
☐ 2 U S Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U S Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U S Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

29 U.S.C Section 1132 Failure to Pay Plan Benefits

Brief description of cause

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F R C P 23☐ CHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions) JUDGE

DOCKET NUMBER

DATE

June 19, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Young-Ah Everson

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

Hartford Life and Accident Insurance
Company; Group Life and Supplemental Life
Plan for Employees of Swissport North
America, Inc. & Swissport North America,
Inc.

CV 08 3037 JL

TO: (Name and address of defendant)

Hartford Life & Accident Insurance Company

Group Life and Supplemental Life Plan for Employees of Swissport North America,
Inc.

Swissport North America, Inc.

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Alan E. Kassan
Peter S. Sessions
KANTOR & KANTOR, LLP
19839 Nordhoff Street
Northridge, CA 91324
Tel#: (818) 886-2525
Fax#: (818) 350-6272

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JUN 20 2008

Richard W. Wieking
CLERK

DATE _____



(BY) DEPUTY CLERK

MARY ANN BUCKLE

NDCA0440

RETURN OF SERVICE

DATE

Service of the Summons and Complaint was made by me¹

Name of SERVER

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served Personally upon the Defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted:
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
0.00	0.00	0.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

ORIGINAL FILED COPY

1 Alan E. Kassan, Esq. Bar No. 113864
E-Mail: akassan@kantorlaw.net
2 Peter S. Sessions, Esq Bar No. 193301
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RICHARD W. TIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 Attorneys for Plaintiff,
Young-Ah Everson

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA - San Francisco

10
11 Young-Ah Everson,

12 Plaintiff,

13 vs.

14 HARTFORD LIFE AND ACCIDENT
15 INSURANCE COMPANY; GROUP
16 LIFE AND SUPPLEMENTAL LIFE
17 PLAN FOR EMPLOYEES OF
SWISSPORT NORTH AMERICA,
INC.; and SWISSPORT NORTH
AMERICA, INC.,

18 Defendants.
19

CASE NO: 08-37

COMPLAINT FOR DAMAGES
FOR :

BREACH OF EMPLOYEE
RETIREMENT INCOME
SECURITY ACT OF 1974;
PREJUDGEMENT AND
POSTJUDGEMENT INTEREST;
AND ATTORNEYS' FEES AND
COSTS

20
21 Plaintiff Young-Ah Everson, herein sets forth the allegations of her Complaint
22 against Defendants, Insurance Company, The Hartford, the Group Life and
23 Supplemental Life Plan for Employees of Swissport North America, Inc., and
24 Swissport North America Inc.

25 **PRELIMINARY ALLEGATIONS**

26 1. "Jurisdiction" – This action is brought under 29 U.S.C. §§ 1132(a), (e),
27 (f) and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter
28 "ERISA") as it involves a claim by plaintiff for employee benefits under employee

1 benefit plans regulated and governed under ERISA. Jurisdiction is predicated under
2 these code sections as well as 28 U.S.C. § 1331 as this action involves a federal
3 question. This action is brought for the purpose of obtaining benefits under the terms
4 of an employee benefit plan, and to clarify and enforce plaintiff's past, present and
5 future rights to benefits under the employee benefit plan named as defendant.
6 Plaintiff seeks relief, including but not limited to: restitution, prejudgement and
7 postjudgement interest, and attorneys' fees and costs.

8 2. Plaintiff is informed and believes that defendant Swissport North
9 America, Inc. (hereinafter "Swissport") is a business entity located and doing
10 business in San Francisco County, California and is the named Plan Administrator for
11 the Plan. Plaintiff is further informed and believes that Swissport was responsible for
12 enrollment, and other administration of the Group Life and Supplemental Life Plan
13 for Employees of Swissport North America, Inc. (hereinafter "Life Plan").

14 3. Plaintiff is informed and believes that defendant, The Hartford Insurance
15 Company (hereinafter "Hartford"), is a corporation with its principal place of business
16 in the State of Connecticut, authorized to transact and transacting business in the
17 Northern District of California and can be found in the Northern District of
18 California. Hartford is the insurer of benefits under the Life Plan.

19 4. Plaintiff is informed and believes that the Life Plan is an employee
20 welfare benefit plan regulated by ERISA, established by Swissport under which
21 plaintiff's husband Gary Everson was a participant, and pursuant to which plaintiff
22 is entitled to supplemental life insurance proceeds as the named primary beneficiary
23 of her husband's Life Plan benefits. The Life Plan is doing business in the Northern
24 District of California, in that it covers employees residing in this judicial district.

25 5. Defendants can be found in this judicial district and the Life Plan is
26 administered in this judicial district. The Life Plan was also specifically
27 administered in this district. Thus, venue is proper in this judicial district pursuant
28

1 to 29 U.S.C. § 1132(e)(2).

2
3 **FIRST CAUSE OF ACTION**
4 **FOR ERISA BENEFITS, PREJUDGEMENT AND POSTJUDGEMENT**
5 **INTEREST, ATTORNEYS' FEES AND COSTS**
6 **(29 U.S.C. § 1132(a))**

7 6. Plaintiff incorporates by reference all preceding paragraphs as though
8 fully set forth herein.

9 7. At all times relevant, plaintiff's husband, Gary Everson was employed
10 by Swissport. As a benefit of his employment, Gary Everson was provided Group
11 Life Insurance through the Life Plan, and was afforded the right to purchase
12 supplemental group life insurance coverage. At all times, the plaintiff was the
13 beneficiary of said life insurance coverage and supplemental life insurance coverage
14 on the life of her husband, Gary Everson.

15 8. The plaintiff is informed that Swissport purchased from Hartford a
16 policy of Group Life Insurance to provide group life benefits for employees of
17 Swissport, bearing policy number GL-675356

18 9. On or about October 18, 2005, Gary Everson applied for supplemental
19 life insurance coverage in the amount of two times (2x) his basic annual earning of
20 forty five thousand seven hundred and sixty dollars (\$45,760), or ninety-one thousand
21 five hundred and twenty dollars (\$91,520) on his life, naming plaintiff as his primary
22 beneficiary. Gary Everson accurately completed all documents given to him by
23 Swissport for the purpose of acquiring said supplemental life insurance and those that
24 were represented to be required under the terms of the Life Plan. Thereafter,
25 Swissport deducted a monthly amount from Gary Everson's paychecks to pay the
26 cost of the premiums for such supplemental life insurance coverage for approximately
27 two years, until his death on July 26, 2007.

1 10. Plaintiff is further informed and believes that said premiums were
2 transmitted by Swissport each month, to Hartford together with a monthly listing of
3 all employees entitled to life insurance benefits under the Plan. Plaintiff is further
4 informed and believes that said list specified all employees who had elected
5 supplemental life insurance coverage, and the amount of such coverage. Plaintiff is
6 further informed and believes that said list stated that Gary Everson had elected
7 supplemental life insurance coverage. Plaintiff is further informed and believes that
8 Hartford accepted said premiums from Gary Everson and Swissport.

9 11. On July 26, 2007, Gary Everson died. Subsequent to the death of Gary
10 Everson, the plaintiff submitted a claim for death benefits to Hartford. Hartford paid
11 the basic life benefit of \$45,760, but refused to pay the remaining \$91,520 in
12 supplemental life insurance benefits on the grounds that Hartford had not received an
13 Evidence of Good Health statement concerning Gary Everson, and that an Evidence
14 of Good Health form was allegedly required as a condition for coverage under the
15 Plan.

16 12. Plaintiff is informed and believes that defendants failed to provide the
17 necessary forms for participants of the Life Plan to submit evidence of good health
18 prior to the death of Gary Everson. Plaintiff is further informed and believes that
19 Swissport, as the Plan Administrator, knew or should have known that it was
20 Hartford's position that completion of such forms was required as a prerequisite to
21 coverage for supplemental life coverage. Defendants were under a duty to provide
22 all necessary information and forms to Gary Everson as a participant and insured
23 under the Life Plan to perfect his right to benefits. Moreover, pursuant to the terms
24 of the Life Plan, defendants were obligated to notify Gary Everson in the event of any
25 disapproval of supplemental life insurance coverage, yet no such disapproval was
26 ever communicated.

27 13. As a result of the aforesaid conduct of Hartford and the Life Plan, it was
28

1 reasonable to expect that Gary Everson was an enrolled participant in the
2 supplemental life insurance coverage under the Life Plan and that plaintiff, as the
3 named beneficiary of said supplemental life coverage, would be entitled to the
4 supplemental life insurance benefits upon Gary Everson's demise. Plaintiff
5 reasonably relied upon the aforesaid conduct of defendants, and each of them and as
6 a result thereof, reasonably expected that Gary Everson had completed all paperwork
7 necessary to effect coverage.

8 14. Any requirement that evidence of good health by completion of an
9 Evidence of Good Health statement was a condition of coverage has been waived by
10 defendants and each of them, by their failure to provide the forms necessary to satisfy
11 said condition to employee Gary Everson and/or their failure to notify their employee,
12 Gary Everson that the alleged condition of coverage had not been satisfied in a timely
13 manner.

14 15. Defendants and each of them are estopped from asserting that evidence
15 of good health and or completion of an Evidence of Good Health statement were
16 necessary conditions of coverage in that the terms of the Life Plan were ambiguous
17 in this regard, and further due to the failure of defendants to communicate the full
18 terms of the Life Plan to employee, or provide the appropriate enrollment forms to
19 Gary Everson and plaintiff in a timely manner. Plaintiff and her husband Gary
20 Everson reasonably relied upon the conduct of defendants, and each of them, in
21 providing enrollment forms and the subsequent deduction and acceptance of
22 premiums for coverage, and as a result, thereof, did not take any further action to
23 perfect coverage under the Life Plan.

24 16. Based thereon, at all times, Gary Everson and plaintiff performed all
25 obligations on their part to be performed pursuant to the terms of the Life Plan.

26 17. As a result of the wrongful denial of benefits due plaintiff, she has been
27 damaged in the amount of the group supplemental life insurance proceeds pursuant
28

to Gary Everson's participation in the Life Plan in a sum to be proven at trial.

18. As a further direct and proximate result of this improper determination regarding plaintiff's supplemental life insurance claim, plaintiff in pursuing this action, has been required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), plaintiff is entitled to have such fees and costs paid by defendant(s).

19. Following the denial of benefits under the Life Plan, plaintiff exhausted all administrative remedies required under ERISA, and Plaintiff has performed all duties and obligations on plaintiff's part to be performed under the Life Plan.

REQUEST FOR RELIEF

WHEREFORE, plaintiff prays for relief against defendants as follows:

1. Payment of supplemental life insurance proceeds due plaintiff;
2. Enforcement of plaintiff's rights under the terms of the Life Plan;
3. Clarification of plaintiff's rights to supplemental life insurance proceeds;
4. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorney fees incurred in pursuing this action;
5. For payment of prejudgment and postjudgment interest as allowed for under ERISA;
6. For such other and further relief as this Court deems just and proper.

DATED: June 19, 2008

KANTOR & KANTOR, LLP

By. 

Alan E. Kassan
Attorneys for Plaintiff,
Young-Ah Everson